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IN THE

Supreme Court of the United States

October Term, 1976.

No. 76-359.

U. S. INDUSTRIES, INC. and DIVERSACON INDUSTRIES, INC.,

Petitioners,

v.

F. BROWNE GREGG,

Respondent.

PETITIONERS' REPLY BRIEF.

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ARGUMENT.

Petitioners, seeing no need to deal with each of respondent's contentions, submit the following brief reply pursuant to Rule 24(4).

(1) On October 4, 1976, this Court noted its probable jurisdiction in *Shaffer, et al. v. Heitner*, No. 75-1812. This case admittedly raises the identical issues raised in *Heitner*. Principles of fundamental fairness suggests that these petitioners be afforded an opportunity to be heard when the Court considers these issues. Moreover, respondent's contention that the decision below is in but "apparent conflict" with *Heitner* (Respondent's Brief in Opposition ["Resp. Br."] p. 9) is premised upon respondent's view that *Heitner* was wrongly decided. That, of course, is one of the precise issues presented to this Court for decision.

(2) Contrary to respondent's contentions (Resp. Br. pp. 6-7), the issue presented by this case is not limited to an interpretation of a unique Delaware statute. Fundamental questions as to the extent of *all* state court jurisdiction, *in personam, in rem,* and *quasi in rem,* are necessarily raised (See Petition, pp. 11-12). Shares of stock are not the only form of intangible personalty owned by non-residents potentially attachable by state courts. There is nothing in the novel construction by the Court below of *International Shoe Co. v. Washington,* 326 U. S. 310 (1945), which warrants the conclusion that the Court was forging a rule applicable to corporate shares only. *Jonnett v. Dollar Savings Bank,* 530 F. 2d 1123, 1130 (3rd Cir. 1976), whose concurring opinion provides the rationale for the opinion below, involved a garden-variety garnishment of a mortgage debtor.

(3) At Resp. Br. 15-16, respondent unwittingly discloses the fallacy which inheres in the opinion below. Gregg states that the seizure of his shares was *per se* unconstitutional because:

> ". . . [I]t was not possible for the defendant to appear in federal court and move for a transfer pursuant to the provisions of Title 28, United States Code, Section 1404(a), without making a general appearance and submitting himself to the personal jurisdiction of the court, thereby facing the possibility that, if the motion for transfer were denied, he would be forced to litigate the action in Delaware (Pet. A. 59)."

28 U. S. C. 1404(a) is the federal *forum non conveniens* statute. It enables an action to be transferred to another district court "for the convenience of parties and witnesses, in the interests of justice" (28 U. S. C. § 1404(a)). Hence, as respondent's contention necessarily acknowledges, the Court below held that there was a *per se* violation of

"traditional notions of fair play and substantial justice" (A86) for petitioners to have sued respondent *quasi in rem* in Delaware, because such suit exposed respondent to the possibility that the trial court might have concluded, *after weighing evidence on the point,* that it *was* indeed convenient to the parties and witnesses *and* in the interests of justice that the case be tried there.

Such a holding is, we submit, so patently untenable as to mandate review and reversal by this Court.

CONCLUSION.

For these reasons as well as those expressed in the Petition, petitioners respectfully urge that review be granted.

Respectfully submitted,

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